

which would not be of a portable nature, and which the party could not be supposed to have about him at the time. It was there held, that when a party who loses money at play immediately gives a check for the amount lost, it is a gaming for money and not a gaming on ticket or credit, and that where money was lost at play in one parish and paid by a check made payable in another, a *qui tam* action under this section might be brought in the district of the parish where the playing *took place. It is held that money *fairly* lost at play cannot be recovered back, as money paid without consideration, in an action of debt for money had and received not concluding according to the form of the Statute, &c., *Thistlewood v. Cracroft*, 1 M. & S. 502. And if the action be commenced after three months, the plaintiff cannot recover, the act rendering the gaming contract only liable to be defeated *sub modo*, *Vaughan v. Blatcomb*, 2 N. R. 403. The right of the loser is, however, a vested right and passes to his assignees in bankruptcy, *Brandon v. Sands*, 2 Ves. Jun. 514, where a plea to a bill for discovery in support of an action, that the action was not commenced and the bill exhibited within three months, was held bad for coupling the two, and the action not being considered *ex delicto*, the defendant, may plead an abatement that the money was due from others as well as himself, *Bristow v. James*, 7 T. R. 257. The loss is considered to take place at one sitting if the company never part, though dinner intervened, *Bones v. Booth*, 2 W. Black. 1226, which is also authority that the action is a remedial one and not penal, and a new trial may be had.

As to the third section of the Statute of Anne, a bill for a discovery in aid of an action must be specific, setting out, that at such a time so much money was lost, *Firebrasse v. Brett*, 1 Vern. 489, which is a curious case, where an injunction was granted to stay proceedings at law for forcibly taking from the defendant 1500*l.*, which he had won of the plaintiff at play, though the defendant had in his answer denied all the circumstances of fraud stated in the bill. It is now held, overruling the earlier cases of *Cowan v. Phillips*, 3 Anstr. 843; *Mynd v. Francis*, 1 Anstr. 5, that a bill for discovery of money lost at play will not lie at the suit of a common informer suing for penalties, *Orme v. Crockford*, 13 Price, 376. But it seems that a common informer may avail himself of a bill of discovery filed against the defendant for the purposes of a former action, *Thistlewood v. Crocroft*, 1 Marsh. 497.

As to the eighth section of the Statute of Anne: under this section if the jury find an assault on account of money won at play the case is within the Statute, though the assault is committed at a subsequent time and place, and after abusive language between the parties in respect of the money won, *R. v. Hill Darley*, 4 East, 174.